IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4963 OF 2007

Balasaheb Rajaram Mali ....Petitioner.
V/s
Ramdas Goverdhan Chavan & Ors..... ....Respondents.

Shri Srihari Anney, Sr. Adv. With Mr.R.V.Govilkar i/by S.S.Aradhye, Adv. For the petitioner.

Mr.A.S.Desai, Adv. For respondent Nos. 1 and 2.

Mr.S.K.Chincholikar, for respondent Nos.3, 4 and 31.

CORAM: A.P.DESHPANDE, J.
5/7/07

PC:

Rule.

Rule made returnable forthwith. By consent of parties taken up for final hearing.

Respondent No.5-Vitthal Sahakari Sakhar Karkhana Maryadit is specified Society and the elections of the said Society for electing the managing committee came to be held in accordance with Election Rules, 1971. In the said election the present petitioner and others came to be elected. The election of the managing committee members has been questioned by respondent Nos. 1 and 2 by filing election petition under section 144 T of the Cooperative Societies Act, 1960.

2. In the said election petition the sugar factory/Society and the present petitioner moved identical applications and urged the Commissioner to exhibit certified copy of the summary/goshwara and consider in evidence. The Commissioner rejected both the applications and aggrieved thereby the present petitioner filed writ petition bearing

writ petition No.2416/07. The learned Single Judge by an order dated 25.4.07 found that the order passed by the Commissioner rejecting the application moved by the sugar factory was legal and proper as the sugar factory/Society was a only formal party. The reason for rejection of the application moved by the present petitioner was that an identical application filed by the sugar factory has been rejected and hence the learned Single Judge allowed the writ petition and directed the Commissioner to decide the application moved by the petitioner dated 15.2.07 on its own merits. The Commissioner thus was obliged to decide the application moved by the petitioner on its own merit. The Commissioner has rejected the application on three grounds viz; that the application moved by the karkhana on the same ground was rejected. This reason obviously cannot be justified because the order passed by this Court directs the Commissioner to decide the application of the petitioner on merits. It could not have been rejected on the ground that the application of the karkhana had been rejected. The other two grounds are (a) that the certified copy of the goshwara sought to be produced on record by the petitioner appeared to the Commissioner to be cooked up and got up document and the Commissioner has also opined that the said certified copy appears to be not genuine document. The reason assigned by the Commissioner to reach the said conclusion is that according to the Commissioner the original goshwara has been in possession of the Commissioner at the point of time when the Tahsildar has allegedly issued certified copies. It is thus clear that the genuineness and admissibility of the said documents are required to be considered by the Commissioner; (b) that the original counting sheets are before the Commissioner and hence it is not necessary to call the summary statement. I am informed the learned senior advocate Shri Aney appearing for the petitioner that the certified copies issued by the

Tahsildar of goshwara are already tendered before the Commissioner by the karkhana. Placing reliance on a judgment reported in the case of ***Magraj Patodia*** v/s ***R.K.Birla & Ors.***, AIR 1971 SC 1295 and to be more precise para 20 thereof it is submitted that even if a document is procured by improper or even illegal means it will not be a bar to its admissibility if it is relevant and the genuineness of the document is established. The learned counsel for the petitioner submits that the Commissioner should allow the production of the certified copy of goshwara and it shall be open for the Commissioner to consider the evidenciary value of that document in case the same is held to be admissible and established to be genuine document. Both the learned counsel appearing for respective parties are agreeable for the production of the certified copy of goshwara which is already placed on record of the Commissioner by Sakhar Karkhana. It is also agreed that the Commissioner should consider the certified copy and decide on its admissibility, genuineness and evidenciary value. This exercise shall be done by the Commissioner and the finding in this regard shall be recorded in the final judgment as it has been brought to my notice that the arguments have commenced after production of evidence by both the parties. Commissioner would now be in readiness to deliver the judgment in the matter after seeking permission of this Court as in Writ Petition No.4497/06, as this Court has directed the Commissioner to seek permission of the High Court before pronouncing the judgment. It is made clear that whatever applications are moved before the Commissioner by respective parties shall be disposed of at the time of delivering the final judgment. Rule made absolute in above terms.

5.7.07